

**INTERGOVERNMENTAL AGREEMENT**

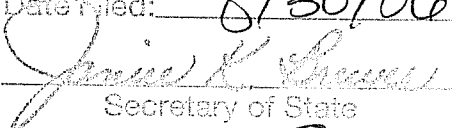

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE CITY OF PEORIA

**THIS AGREEMENT** is entered into August 30th, 2006, pursuant to Arizona Revised Statutes, § 11-951 through § 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF PEORIA acting by and through its MAYOR and CITY COUNCIL (the "City").

**I. RECITALS**

1. The State is empowered by Arizona Revised Statutes §§ 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State. The State and the City are collectively referred to as "Parties" and individually as "Party," "State" or "City."
2. The City is empowered by Arizona Revised Statutes § 11-952 *et seq.* and *City Charter Article 1, Section 3(15)* to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.
3. The State's Freeway Management System (FMS), including but not limited to, closed circuit TV (CCTV) cameras, Dynamic Message Signs (DMS), ramp meters, vehicles detectors, node buildings, conduit, pull boxes, fiber optic cable and the Traffic Operations Center (TOC), enables ADOT to increase highway capacity, manage incidents and provide traveler information. The City's Intelligent Transportation System (ITS), hereinafter referred to as the "City's System," enables the City to manage traffic and traffic control devices in and around the City, including the possibility of managing traffic signals at freeway interchanges.
4. The State agrees to share use of State's FMS with the City to further interconnect and expand the coverage and capability of the City's System. The City agrees to share use of the City System to further expand the capability of the State system. Shared facilities will assist with operating traffic signals, communication systems and other ITS devices, including the Regional Community Network (RCN).
5. Incident to the State's Freeway Management System (FMS) improvements (Phases 10 and 11) on the L101, the City requests, and the State agrees to incorporate in its plans, the installation of additional City facilities and devices to allow sharing of City and State systems, herein referred to as the "Project." The additional facilities and devices will be added along certain freeway segments, as shown on Exhibit "A", for use by the City and State, at an estimated amount of \$299,554.92 (City's Share), as shown on Exhibit "B", collectively attached hereto and made a part hereof, with more details reflected on related Project Plans.

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NO. 28397  
Filed with the Secretary of State  
Date Filed: 8/30/06  
  
Secretary of State  
By: 

L CON 09106

6. The City agrees to reimburse the State for all costs associated with installation related to this Agreement of City's System and assume responsibility for the operation and maintenance of the City's System on State's right of way.

7. The purpose of this Agreement is to outline each party's responsibilities for the shared use of the State FMS under the Scope of Work.

8. The parties hereto agree to and acknowledge the following conditions: **a)** the estimated monetary amounts referenced in this Agreement are subject to change and can change substantially before completion of the Project; **b)** the parties shall perform their responsibilities consistent with this Agreement; and **c)** any change or modification to the Project will only occur with the mutual written consent of both parties.

**THEREFORE**, in consideration of the mutual agreements expressed herein, it is agreed as follows:

## **II. SCOPE OF WORK**

1. The State shall:

a. Upon execution of this Agreement, agree to be the City's designated agent for the Project. Also upon execution of this Agreement, invoice the City an amount not to exceed \$299,554.92 towards the cost of the Project, and provide an itemized list of said costs, which shall include fixed rates and fixed costs, as shown on Exhibit B. While the actual costs of the Project shall be determined upon completion of construction, the City is contributing a set dollar amount applied towards a predetermined length of fiber and number of conduit crossings (time and materials). As this cash deposit is depleted, the State and City will mutually agree upon the course of action to be taken.

b. Prepare design plans, specifications, as-builts and other such documents and services required for construction bidding and construction of the Project, and provide to the City for their review and comment. Provide the City with copies of the design plans, specifications, as-builts and other such documents for their records.

c. Advertise for bids and award one or more construction contracts(s) for the Project. Administer the Project and make all payments to the contractor(s). Be responsible for contractor claims for extra compensation due to delays or whatever reason, attributable to the State.

d. Upon completion of the Project and final inspection, notify the City in writing that the Project has been constructed in accordance with the Project Plans and other related documents, and has been satisfactorily completed.

e. Designate a minimum of two (2) fiber paths solely for City use in a fiber optic cable at no cost to the City on all State installations of FMS within City boundaries. The State may designate additional fiber optic cable and FMS capability for City use if the State determines such designation is advantageous to the State. These fiber paths may be installed in the center conduit if FMS fiber already exists. A different arrangement of fiber paths may be installed, as mutually agreed upon by the City and State.

f. Include in the standard design and construction of new freeways, as well as the reconstruction of existing freeways, a minimum of one conduit between the FMS conduit system and all freeway interchange traffic signal controllers.

g. Provide cable splices where both parties mutually agree as indicated on project plans.

h. Review the design documents required for construction of the City's System on State right of way and provide comments as appropriate.

i. Grant an Encroachment Permit for the construction of the City's System ITS components within the State's rights-of-way, through the State's Phoenix Maintenance District Permits Office. Any

new construction or installation shall require a separate review and permit, as per the Phoenix Maintenance District's established procedures.

j. Grant the City an "Encroachment Permit" through the State's Phoenix Maintenance District Permits Office for the purpose of maintaining and conducting activities on the City's System such as troubleshooting or repair of cable breaks or splices, etc... Said permit may be renewed on an annual basis, as established by the State's Phoenix District Permit Supervisor.

k. Be responsible for blue staking the State conduit and fiber cable.

l. In design and construction of the State's FMS, at no additional cost to the City, keep the City and the State's fiber optic networks completely separated where practical for maintenance purposes.

2. The City shall:

a. Upon execution of this Agreement, designate the State as authorized agent for the City. Also upon execution of this Agreement, and within 30 calendar days after receipt of an invoice, remit an amount not to exceed \$299,554.92 to the State towards the estimated costs of the Project, which shall include fixed rates and fixed costs, as shown on Exhibit B. While the actual costs of the Project shall be determined upon completion of construction, the City is contributing a set dollar amount applied towards a predetermined length of fiber and number of conduit crossings (time and materials). As this cash deposit is depleted, the State and City will mutually agree upon the course of action to be taken.

b. Review the design plans, specifications and other such documents and services required for construction bidding and construction of the Project and provide comments to the State as appropriate. Be responsible for any design consultant and contractor claims for extra compensation, due to delays or whatever reason, attributable to the City.

c. Designate two (2) fibers on a City fiber optic cable solely for the State's use, at no cost to the State, on all City installations of fiber within City's ITS connections to City's TMC. Additional ITS devices and fibers may be designated for State use, should the City find such designation is advantageous to the City. The City, at its sole discretion may allow the State use of City fibers and devices at other locations throughout the City should the City find such use advantageous to the City.

d. Allow the State or its designated representative to install FMS and ITS devices in City facilities should such installation further enhance the State FMS and City System including the installation of the Regional Community Network, where mutually agreed to and shown on Project Plans approved by both agencies.

e. Provide cable splices where both parties mutually agree as indicated on project plans.

f. In design and construction of the City's System, at no cost to the State, keep the City and the State's fiber optic networks completely separated where practical for maintenance purposes.

g. Provide design plans, specifications and other such documents and services required for construction bidding and construction of the City's System to the State for concurrence when sharing use of the State's FMS.

h. Obtain an Encroachment Permit for the City's construction of System ITS components within the State's rights-of-way, through the State's Phoenix Maintenance District Permits Office. Installation shall be on a schedule as determined by the City and approved through the State's Permit process.

i. Obtain, per established procedures of the State's Phoenix District Permit Office, a valid annual citywide Encroachment Permit for the routine maintenance and emergency maintenance work provided by the City within the State's rights-of-way.

j. Agree any new construction or installation shall require a separate permit per the State's Phoenix District's established procedures, which may be obtained through the District Office referenced herein.

k. Advise the State of plans for each portion of City's System installation and furnish the State any available as-built information for the City's System in both electronic and paper format.

l. Comply with all applicable traffic control requirements and regulations while working in State's rights-of-way.

m. Be responsible for all costs associated with installing, operating, and maintaining the City's System unless otherwise specified in this Agreement.

n. Be responsible for blue staking the City's System components within the State's rights-of-way.

3. Both Parties Agree:

a. The State and the City will coordinate with one another when responding to and repairing any damage to either fiber system or facility, which may impact the other's system through shared use of fiber optic cable, pull boxes, innerduct, conduit or devices.

b. To maintain the devices and facilities within their rights-of-way and jurisdiction unless otherwise agreed to by both agencies.

c. To not allow use or lease of the fiber for any private enterprise or profit.

### **III. MISCELLANEOUS PROVISIONS**

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of the Project and said payments or reimbursements; provided however, that any provisions herein for maintenance provided by the City shall be ongoing. This Agreement may be cancelled at any time prior to the award of a Project construction contract, upon thirty (30) calendar days written notice to either party. It is understood and agreed, that should the City fail to maintain the City's System as referenced herein, the State shall in no way be obligated to maintain the City's System.

2. Future devices and facilities may be added as technology allows, upon mutual agreement by each party. However, the list of freeway segments and details set forth in this Agreement in Exhibit A may be added to or have deletions made by Amendment to this Agreement, with all other conditions set forth remaining in effect.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. Each party (as "Indemnitor") agrees to indemnify, defend, save and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses including reasonable attorneys' fees, hereinafter collectively referred to as ("claims"), arising out of bodily injury of any person, including death or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the Indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees or volunteers.

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

6. The provisions of Arizona Revised Statutes § 35-214 are applicable to this contract.

7. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order

Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds. Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments as a result of termination under this paragraph.

9. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

10. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 S. 17th Avenue Mail Drop 616E  
Phoenix, AZ 85007  
Fax: (602) 712 - 7424

City of Peoria  
City Traffic Engineer  
8401 West Monroe Street  
Peoria, AZ 85345

11. Pursuant to Arizona revised Statutes § 11-952, (D), attached hereto and incorporated herein, is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.

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IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

**CITY OF PEORIA**

By \_\_\_\_\_

John C. Keegan  
Mayor

**STATE OF ARIZONA**

Department of Transportation

By \_\_\_\_\_

DOUGLAS A. FORSTIE, P.E.  
Deputy State Engineer, Operations

ATTEST:

By \_\_\_\_\_

MARY JO KIEF  
City Clerk

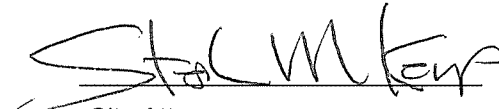



**ATTORNEY APPROVAL FORM FOR THE CITY OF PEORIA**

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the CITY OF PEORIA, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 21<sup>st</sup> day of August, 2006.

  
City Attorney

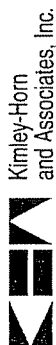
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**EXHIBIT A – JPA 06-017**  
**L101 Shared FMS**

- The City of Peoria will pay for 1 and 1/2 (of the 3) innerducts (ID) required between Olive Avenue and Union Hills Drive.
- The City of Peoria will pay for the City of Peoria's trunk cable to be installed between Olive Avenue and Union Hills Drive.
- The City of Peoria will pay for new City No. 9 pullboxes and connecting conduit located at Northern, Olive, Peoria and Thunderbird. These boxes will provide access points to future City of Peoria fiber at Northern, Olive, Peoria and Thunderbird.
- The City of Peoria will pay for 1 (one) conduit with 2 IDs to connect to the existing City of Peoria No. 9 pull box at Bell Road to make connection to their existing conduit and fiber infrastructure there.
- The City of Peoria will pay for splice closures for City of Peoria cable, where required. This is planned to occur at Peoria and Thunderbird Roads. A connection to an existing City of Peoria No. 9 pullbox will be made at the Peoria Avenue crossing and at Thunderbird Road. In both cases, the full cable splice will be in the City of Peoria No. 9 pullboxes; therefore, these splice locations will be able to be accessed by City of Peoria for future fiber connectivity purposes.
- In addition to the overall construction cost, City of Peoria will also pay for mobilization, traffic control, construction administration and contingency.

ARIZONA DEPARTMENT OF TRANSPORTATION  
INTERMODAL TRANSPORTATION DIVISION  
TRANSPORTATION TECHNOLOGY GROUP  
CONSTRUCTION COST ESTIMATE

JPA 06-017  
Exhibit B



TRACS No : 101 MA 000 H6666 01 C  
CPSID : 101 MA 000 H6666 01 C  
Proj Manager : Farzana Yasmin



Project Location : ADOT FMS Phases 10 & 11 - Fiber & Conduit Only  
Project Description : Partial FMS Construction  
Bid Advertisement Date : July 2006

ITEM No.	ITEM DESCRIPTION	UNIT	95% PS&E 05/10/06		
			DATE: QUANTITY	UNIT PRICE	AMOUNT
7320070-C	ELECTRICAL CONDUIT (3") (PVC) (C)	L.F.T.	530	\$15.00	\$7,950.00
7320073-C	ELECTRICAL CONDUIT (2 - 3") (PVC) (C)	L.F.T.	155	\$21.00	\$3,255.00
7320295-C	ELECTRICAL CONDUIT (1-3") (HDPE DIRECTIONAL DRILL) (C)	L.F.T.	50	\$35.00	\$1,750.00
7320296-C	ELECTRICAL CONDUIT (2-3") (HDPE DIRECTIONAL DRILL) (C)	L.F.T.	55	\$40.00	\$2,200.00
7320421-C	PULL BOX (NO. 7) (WITH EXTENSION) (C)	EACH		\$700.00	
7320455-C	PULL BOX (NO. 9) (C)	EACH	5	\$2,000.00	\$10,000.00
7320788-C	SINGLE MODE FIBER OPTIC CABLE (96 FIBERS) (C)	L.F.T.	38,600	\$3.50	\$135,100.00
7320794-C	FIBER OPTIC SPLICE CLOSURE (FULL SPLICE CLOSURE) (C)	EACH	2	\$2,425.00	\$4,850.00
7320809-C	CABLE INNERDUCT (1") (C)	L.F.T.	53,637	\$1.00	\$53,637.00
TOTAL ITEM 731 - 737 (PEORIA)					
9010001-C	MOBILIZATION (CITY OF PEORIA)	L.SUM	1	\$19,000.00	\$19,000.00

CITY OF PEORIA FMS SUBTOTAL:

\$237,742.00

CITY OF PEORIA CONSTRUCTION COST SUBTOTAL				\$237,742.00
Traffic Control				
Construction Administration Services		5%		\$11,887.10
		15%		\$35,661.30
CONSTRUCTION SUBTOTAL				\$285,290.40
Construction Contingencies @ 5%		5%		\$14,264.52

CITY OF PEORIA TOTAL COST

\$ 299,554.92

NOTES:

L CON 09106

RESOLUTION NO. 06-129

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF PEORIA, ARIZONA, ADOPTING A RESOLUTION APPROVING THE INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA FOR THE PURPOSES OF INSTALLING INTELLIGENT TRANSPORTATION SYSTEMS (ITS) DEVICES ON THE STATE LOOP 101 FREEWAY RIGHT OF WAY (ROW).

WHEREAS, The State has requested that the City of Peoria participate by providing \$299,554.92 for the Loop 101 Freeway Management System Project (FMS).

WHEREAS, execution of the agreement between the State of Arizona (Department of Transportation) and the City of Peoria for the installation of ITS devices on the State's Loop 101 Freeway ROW in the City's jurisdiction. Portions of the fiber optic cable will be used to connect the ADOT traffic signals and the DMS to the ADOT Traffic Operations Center; an additional fiber optic cable will be used to form a redundant loop for the City of Peoria traffic signal system; and

WHEREAS, by the City entering into the intergovernmental agreement with the State of Arizona, the public interest will best be served.

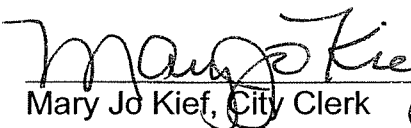
THEREFORE, BE IT RESOLVED that the Mayor and City Council of the City of Peoria, Arizona approve and execute this agreement between the State of Arizona and the City for the installation of ITS devices on the State's Loop 101 Freeway ROW in the City's jurisdiction.

APPROVED AND PASSED by the Mayor and City Council of the City of Peoria, Arizona this 21<sup>st</sup> day of August, 2006

CITY OF PEORIA

  
\_\_\_\_\_  
John C. Keegan, Mayor


ATTEST:

  
\_\_\_\_\_  
Mary Jo Kief, City Clerk



APPROVED AS TO FROM:

  
\_\_\_\_\_  
Steve Kemp, City Attorney

<p>TERRY GODDARD Attorney General</p>	 <p>OFFICE OF THE ATTORNEY GENERAL STATE OF ARIZONA</p>	<p>CIVIL DIVISION TRANSPORTATION SECTION Writer's Direct Line: 602.542.8855 Facsimile: 602.542.3646 E-mail: Susan Davis@azag.gov</p>
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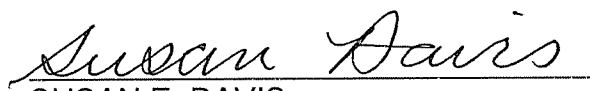
**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR06-0727TRN (**JPA 06-017**), an Agreement between public agencies, i.e., The State of Arizona and The City of Peoria, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: August 23, 2006

TERRY GODDARD  
Attorney General

  
SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

SED:mjf:975792  
Attachment